

**REGIONAL TRIBAL OPERATIONS COMMITTEE MEETING  
U.S. EPA REGION 5  
SEPTEMBER 03, 2003**

**Meeting Participants:**

Bharat Mathur, Deputy RA, EPA, ORA  
Lisa C. Farmby-Fleet, EPA, IEO  
Jodi Traub, EPA, WD  
Bill Dew, EPA, IEO  
Tom Skinner, EPA Regional Administrator  
Douglas Craven, Little Traverse Bay Band  
Ferdinand Martineau, Fond du Lac Reservation  
Bill Munro, EPA, SF  
Stephanie Ogren, Little River Band of Ottawa  
Jim Dunning, Ho-Chunk Nation  
Safety  
Katie Staniha, St. Croix  
Jennifer Manville, EPA, IEO  
Norman Niedergang, EPA, RMD  
Cheryl Newton, EPA, ARD  
Al Fenedick, EPA, IEO  
Stan Ellison, Shakopee Mdewakanton Sioux  
Debra Crume-Williams, EPA, IEO

Don deBlasio, EPA, OPA  
Gary Gulezian, EPA, GLNPO  
Larry Wawronowicz, Lac du Flambeau  
Tina VanZile, Sokaogon Chippewa  
Ralph Dashner, Bad River Band  
Bertram Frey, EPA, ORC  
Margaret Guerriero, EPA, WPTD  
Patrick Pelky, Oneida Env. Health & Safety  
Paul Ninham, Oneida Nation  
Jennifer Hill-Kelley, Oneida Env Health &  
  
Sarah Slayton, St. Croix  
Darin Steen, Bois Forte  
Steve Dodge, EPA, IEO  
Edward Fairbanks, EPA, IEO  
Heather Authur, Menominee Tribes  
John Persell, MN Chippewa Tribe

**Welcome and Introductions**

Ninham welcomed the RTOC on behalf of the Oneida Nation Business Committee and provided a blessing for the meeting. Skinner thanked the Oneida Nation for hosting the meeting. Introductions were made. Martineau also thanked the Oneida Nation for hosting the meeting.

**RTOC Administrative Business and Updates**

Skinner stated that a copy of the meeting minutes from June 03, 2003 were previously distributed to the RTOC and were included in the meeting packet. Any additional comments on the minutes should be forwarded to Dew. At this point the meeting minutes were considered approved.

Manville indicated that the RTOC Tracking Matrix was included in the meeting packet, and reviewed the action items and status. In regard to action item number one, Manville added that the issues and questions presented to former Administrator Whitman at the June RTOC were recently submitted to Headquarters for use in an Agency newsletter on tribal environmental protection. Issues are being collected from around the country to submit to Acting Administrator Marianne Horinko and Acting Deputy Administrator Stephen Johnson for response. A copy of the material submitted to Headquarters is included in the meeting packet. Skinner provided some further information on the leadership changes at the Agency and suggested that the RTOC pursue the June issues/questions with the incoming U.S. EPA leadership. Ellison supported

waiting for the placement of the new staff. Region 5 will make the necessary invitations to an upcoming RTOC meeting at the appropriate time.

Craven provided an update from the National Tribal Operations Committee (NTOC). The tribes in Michigan selected George Bennett, a former chairperson of the Grand Traverse Band of Ottawa and Chippewa Indians and a current member of the Natural Resource Commission, to complete Taimi Hoag's term on the NTOC. Wawronowicz rotated off the NTOC in July. Ellison has been selected as the representative for the Minnesota tribes and replacement for Wawronowicz.

Manville reported that the Multi-Agency MOU Work Group has not met since the last RTOC meeting, and a copy of the announcement for the next meeting of the Work Group was included in the meeting packet. The Bureau of Indian Affairs is hosting the meeting on September 23, 2003, and tribes are welcome to submit agenda items and/or attend the meeting.

Martineau thanked Persell for his work on the Tribal Science Council (TSC), and announced that Christine Berini has been selected as the next Region 5 representative to the TSC. Persell suggested that Berini should ensure that an update from the TSC is provided at each RTOC. In addition, Persell reported that the TSC is developing a workshop on U.S. EPA's re-registration of the pesticide lindane. The workshop would look at the science surrounding the issue and the impact to Indian Country, and would likely be held in January/February 2004. Persell has agreed to continue to work on the committee developing the workshop.

#### **Advanced Notice of Proposed Rulemaking (ANPRM) – Federal Water Quality Standards for Indian Country**

The meeting packet included the following documents: "Federal Water Quality Standards for Waters in Indian Country" fact sheet; "Advanced Notice of Proposed Rulemaking for Federal Water Quality Standards for Waters in Indian Country: Questions and Answers"; and "Interim Draft Outreach and Consultation Plan Federal Water Quality Standards for Waters in Indian Country". Traub explained that in 2001 the Agency issued draft federal core water quality standards for Indian Country. At that time, the new Administration decided to withdraw the draft standards for further review. The ANPRM is a new approach to this issue which allows the Agency to gather information without taking a position. Prior to the release of the ANPRM, the Agency is gathering input on how it should formally consult with the tribes. Skinner suggested that the Water Division schedule a conference call with the IEO and the RTOC within 30 days to discuss consultation. Traub indicated that a letter will be sent from Skinner to the tribes notifying them of the conference call and asking for input on consultation methods. Kathy Mayo of the Water Division and Manville are the two Region 5 lead contacts for the ANPRM.

#### **Potential Use of a "Citation" Approach for Enforcing Storm Water Requirements**

Traub recalled that this item was raised at the June RTOC meeting. A national workgroup has been formed to discuss two new enforcement approaches:

- (1) In an Expedited Settlement Offer, an inspection would be conducted, report written,

settlement calculated on-site, and the company would have a set number of days to pay a fine. One regional office has tried this approach with success. However, the settlement can't be issued by the inspector (must be a supervisor) and there is considerable paperwork required. Region 5 is working on a modified version of this approach that would be used only in Indian Country and would require less paperwork. The modified version will be sent to Headquarters for approval as a pilot program.

(2) Under the Administrative Order Delegation Initiative, the inspector would be able to issue a notice of violation on the spot. There is not as much paperwork involved and a supervisor is not needed. This approach is on the back burner until approach number 1 has been developed.

These new approaches will likely be ready for implementation next construction season. Regardless of the progress on the two approaches above, the Water Division intends to be on-site next year in Indian Country enforcing the storm water requirements. The key is still to get tribal staff federal inspector credentials. Potentially, tribal inspectors with federal credentials could submit reports/pictures to Region 5 who would then issue a notice of violation. Wawronowicz asked how tribes would fund these inspections? Would Section 106 need to be used? Traub indicated that the Agency is still working on identifying funding, and possibly some Section 106 funds could be reprogrammed for this work. Wawronowicz stated that tribes will not be able to implement this rule without funding.

#### **Direct Implementation Tribal Cooperative Agreements (DITCAs)**

A report entitled "Direct Implementation Tribal Cooperative Agreement RTOC Update – September 2003" was included in the meeting packet. Fenedick reviewed the contents of the report. Authority for the Agency to enter into DITCAs with tribes through September 2004 has been included in House Rule 2861 (also included in the meeting packet). Using the new tribal environmental agreement format, Region 5 has been able to identify specific tribal interest in pursuing DITCAs. Region 5 has also been working on training opportunities for obtaining federal inspector credentials.

Skinner stated that the Agency has pushed for additional funding for tribal programs in general. Mathur reported that the draft Fiscal year 2005 budget has an increase for direct implementation in Indian Country. It is not obvious in the budget documents right now how those dollars would be allocated. Traub indicated that the Office of Water has formed a small taskforce and DICTAs will be one of the first issues covered. There may be progress to report out at the December RTOC meeting. Mathur also reported that a national policy group has been formed and DICTAs has been identified as an issue.

#### **Issue Paper on Funding Implementation Activities under the General Assistance Program**

A "Background Paper: Status of Implementation Activities Under EPA's General Assistance Program" was included in the meeting packet. Fairbanks indicated that the RTOC requested this paper at the March 2003 meeting, and reviewed the contents. There is a national discussion on this issue right now, and Region 5 has asked that Headquarters slow down this discussion in order for us to submit this background paper. The Tribal Caucus was asked to review the paper and provide comments to Dew by September 18, 2003. In addition, it was suggested that the

Tribal Caucus communicate their views on this issue to the NTOC, Region 5 Indian Environmental Office, and the American Indian Environmental Office.

### **U.S. EPA Budget Process Update and Forecast**

Niedergang distributed a handout entitled “FY04 Budget Status as of July 21, 2003 House Appropriations Committee Action” [appended at end of these minutes], which provided information on both the President’s suggested budget and actions the House has taken. The 9.5% increase to the State and Tribal Assistance Grants is 14% of the total increase in State and tribal categorical grant funding. The handout listed a number of specific programs that have been proposed for either funding increases or decreases. In addition, it is proposed that the Agency receive a general reduction of \$30 million. In the past, these general reductions have offset the areas that Congress has identified for additional funding.

### **Measure and Report on Environmental Results on Tribal Land**

Skinner discussed the need to demonstrate that actual environmental results/improvements have occurred through our programs. If that can be shown, then we are more likely to attract additional funding. Hill-Kelley reported that this issue was considered by the Tribal Caucus during their morning session. In addition, the Oneida Nation is working on performance-based measurements. Skinner offered that the Agency would be willing to work with any and all tribes that are interested in developing measurements. Persell reported that the concept of quality adjusted life years is under discussion by the TSC.

### **Open Forum**

Traub indicated that in House Rule 2861, there is a proposed increase to Clean Water Act Section 106 funding. One option would be to take the increase off the top and reserve those funds for DITCAs. A question was raised concerning the outcome of the Section 106 funding formula discussion. Traub will determine the status and report back to the RTOC.

Martineau reported out on items discussed by the Tribal Caucus. The Region 5 tribes have been asked to provide a representative to the Tribal Association of Solid Waste and Emergency Response (TASWER). The Tribal Caucus would like to have the Director of TASWER attend the December RTOC meeting, and receive pertinent documents on the group such as the by-laws, membership list, etc. The Tribal Caucus has received nominations for the Taimi Hoag Environmental Stewardship Award, but needs to see the award criteria prior to selecting a candidate. The Tribal Caucus would like a RTOC member contact list prepared and distributed.

Skinner announced that Casey Ambutas is on an assignment to the Menominee Tribal College. Dew indicated that until the Indian Environmental Office receives the authority to backfill the position, Ambutas’s duties will be allocated among the existing staff. Traub reported that there also changes within the Water Division. Both the positions held by Bob Newport and Mary Pat Tyson have been posted. The State and Tribal Program Branch will be receiving a new supervisor position. During this transition, if there are any problems please contact Traub directly.

Fairbanks asked if the FY04 budget included funds for DITCAs. Niedergang responded that

each program needs to locate funding sources within their portion of the budget. However, any increases that the Agency may receive will not likely be in FTE – the Agency is not growing. Dodge suggested that the Region 5 Direct Implementation Strategy be revisited to determine DICTA funding needs.

Gulezian offered that the State of the Lakes document touches on the issue of environmental indicators. The RTOC discussed the possibility of defining some current environmental indicators that could be used across Indian Country.

Fairbanks announced some upcoming meetings/training

1. Tribal environmental agreement signing ceremony for the Minnesota tribes tentatively scheduled for October 16, 2003 at Bois Forte
2. Tribal Lead (Pb) Conference last week in October 2003 at Upper Sioux Community
3. Environmental Regulation in Indian Country (environmental law seminar for tribal councils, tribal attorneys, and environmental specialists) on November 18-19, 2003 at the Fond du Lac Reservation

### **Next Meeting**

The next meeting of the RTOC is scheduled for December 03, 2003, at the Agency offices in Chicago.

September 3, 2003 RTOC  
FY04 Budget Status as of July 21, 2003 House Appropriations Committee Action

Increases

- □ STAG categorical grants increase by 3% over FY03 enacted levels
- GAP grants increase by 9.5% over FY03 enacted levels
- CWA Section 106 grants increase by 4.8% over FY03 enacted
- Tribal program funding “closes the gap” compared to other programs
- Other increases in President’s Budget or by House action
  - □ National Estuary Program
  - □ Environmental Justice
  - □ Rural Water Technical Assistance
  - □ Source Water Protection
  - □ WQ Monitoring
  - □ School Bus Diesel Retrofit
  - □ Air Toxics Monitoring
  - □ Children’s Asthma
  - □ Clean Skies
  - □ Motor Vehicle Compliance
  - □ PWSS Grants
  - □ Wetlands

Decreases

- □ Overall, EPA budget reduced about 1.0% from FY03 enacted (from \$8,078.7M to \$8,005.1M)
- STAG account as a whole reduced by about 6%; major reduction to Clean Water State Revolving Fund, Alaska Native Villages
- Other reductions in President’s budget or by House action
  - □ Information Technology
  - □ Data Standards
  - □ Regional Management
  - □ Great Lakes Legacy Act
  - □ RCRA Waste Reduction
  - □ Mexico Border
  - □ General Reduction